



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Removal of an Outdoor
Advertising Sign Owned by Schneider's Pottery
Shop, Town of Minocqua, Oneida County,
Wisconsin

Case No. TR-01-0023

FINAL DECISION

On July 31, 2000, the Department of Transportation issued a 60-day removal notice to Schneider's Pottery Shop for a sign owned by Schneider's Pottery Shop located in Oneida County, on the south side of Highway 70, at the intersection with Squirrel Lake Road. By letter dated September 12, 2000, Richard C. Schneider requested a hearing to review the Department of Transportation's removal order. Pursuant to due notice a hearing was held in Stevens Point, Wisconsin, on June 29, 2001, before Mark J. Kaiser, Administrative Law Judge. The parties submitted written argument after the hearing. The last brief was received on July 9, 2001.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(b), the PARTIES to this proceeding are certified as follows:

Richard C. Schneider
Schneider's Pottery Shop
312 Linwood Avenue
Stevens Point, WI 54481

and

Schneider's Pottery Shop
8441 Squirrel Lake Road
Minocqua, WI 54548

Wisconsin Department of Transportation, by

Paul E. Nilsen, Assistant General Counsel
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on August 10, 2001. The Respondent and the Petitioner filed comments on the Proposed Decision on August 15, and 24, 2001, respectively. Having received the submissions of the parties and the record in this matter, I hereby adopt the Proposed Decision of the Administrative Law Judge as the Final Decision in this matter.

Findings of Fact

The Administrator finds:

1. Richard Schneider owns and operates Schneider's Pottery Shop at 8441 Squirrel Lake Road in Minocqua, Wisconsin.
2. Mr. Schneider started the business in 1975. Sometime after starting the business he erected a small sign at the intersection of Squirrel Lake Road and State Trunk Highway 70 (STH 70).
3. On July 1, 1976, a portion of STH 70, including the intersection with Squirrel Lake Road, was designated a part of the federal-aid primary highway system. As a part of the federal-aid primary highway system, outdoor advertising along the subject stretch of STH 70 is now regulated by Wis. Stat. § 84.30.
4. The Department of Transportation (Department) conducted sign inventories along the subject stretch of STH 70 on August 3 and September 21, 1976, and did not discover the existence of Mr. Schneider's sign. During another sign inventory conducted on March 27, 1981, the Department first became aware of Mr. Schneider's sign.

Although the Department did not discover the existence of Mr. Schneider's sign during the 1976 inventories, there is no reason to doubt Mr. Schneider's testimony that the sign was first erected in 1975. Mr. Schneider further testified that the sign was only erected seasonally when his business was open (generally from Memorial Day weekend to Labor Day weekend). It is conceivable that the sign had already been removed for the year at the times the Department conducted its sign inventories in 1976.
5. The subject sign is approximately four feet by six feet in size and advertises "Schneider's Pottery Shop." It is located approximately 102 feet from the nearest pavement edge of the intersection of Squirrel Lake Road and STH 70 and near other outdoor advertising signs. The subject sign is visible from the main-traveled way of STH 70. No permit has been applied for or issued for the sign.
6. Assuming Mr. Schneider did erect the subject sign sometime in 1975, it would have been erected prior to the date this stretch of STH 70 was designated a part of the federal-aid primary highway system. Accordingly, it could have been maintained as a legal, nonconforming sign. However, to be maintained as a legal, nonconforming sign, a sign must continue to be

lawfully maintained. Mr. Schneider's removal of the sign on or about Labor Day weekend every year caused it to lose its legal, nonconforming status.

7. The Department also asserts that the subject sign has lost its legal, nonconforming status because it was substantially changed since it became a legal, nonconforming sign on July 1, 1976. Mr. Schneider acknowledged that he raised the height of the sign and performed routine maintenance on the sign since it was first erected. The record contains insufficient evidence to conclusively find that the sign has been substantially changed since it acquired legal, nonconforming status. However, since the sign has already been found to have lost its legal, nonconforming status due to the fact it was not continuously maintained since July 1, 1976, it is unnecessary to make a finding on this issue.

8. The subject sign is not eligible for a sign permit at its current location because it is less than 300 feet from an intersection at grade and also because it is within 100 feet of other lawfully maintained outdoor advertising signs.

Discussion

Mr. Schneider argues that his sign should be allowed to remain because it has presented no threat to public safety in the more than twenty-five years it has been in existence and is small and unobtrusive compared to permitted billboards which have been lawfully erected in the area. Although it is difficult to quantify any harm to the public welfare resulting from the subject sign, the law regulating outdoor advertising signs is clear. The sign had legal, nonconforming status at the time STH 70 was designated a part of the federal-aid primary system. However, due to Mr. Schneider's annual removal of the sign, it lost that status. The reasons Mr. Schneider gave for removing the sign at the close of every season are certainly rational. However, the legislative intent of Wis. Stat. § 84.30 is that over time legal, nonconforming signs will disappear from the sides of regulated roadways. Accordingly, once a legal, nonconforming sign has been removed, it can not be reerected. It is understood that the subject sign is important for potential customers to find Mr. Schneider's business. However, alternatives to the subject sign are available to him. These alternatives include applying for a permit for a Tourist—orientated directional sign pursuant to Wis. Stat. § 86.196 or relocating the current sign to a site which is eligible for a sign permit.

Conclusions of Law

The Administrator concludes:

1. The sign erected by Richard Schneider at the intersection of Squirrel Lake Road and STH 70 was erected prior to this portion of STH 70 being designated part of the federal-aid primary highway system. Accordingly, it could be maintained as a legal nonconforming sign pursuant to Wis. Stat. § 84.30(5). However, pursuant to Wis. Admin. Code § Trans 201.10(2), for a legal, nonconforming sign to be maintained it must, among other requirements, continue to be lawfully maintained. Mr. Schneider's annual removal of the sign on or about the Labor Day

weekend and reerection of the sign the following Memorial Day weekend caused it to lose its legal, nonconforming status.

2. Pursuant to Wis. Stat. §§ 84.30(18) and 227.43(1)(bg) the Division of Hearings and Appeals has the authority to issue the following order:

Order

The Administrator orders:

The removal order issued to Schneider's Pottery Shop by the Wisconsin Department of Transportation on July 31, 2000, requiring the removal of the outdoor advertising sign that is the subject of this hearing is affirmed.

Dated at Madison, Wisconsin on September 21, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____

DAVID H. SCHWARZ
ADMINISTRATOR

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.